

**WILLKIE FARR & GALLAGHER LLP**

Benedict Y. Hur (SBN: 224018)  
Simona Agnolucci (SBN: 246943)  
Eduardo E. Santacana (SBN: 281668)  
Tiffany Lin (SBN: 321472)  
One Front Street, 34th Floor  
San Francisco, CA 94111  
Telephone: (415) 858-7400  
Facsimile: (415) 858-7599  
bhur@willkie.com  
sagnolucci@willkie.com  
esantacana@willkie.com  
tlin@willkie.com

Attorneys for  
GOOGLE LLC

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JONATHAN DIAZ and LEWIS  
BORNMANN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 5:21-cv-03080-NC

**GOOGLE'S PROTECTIVE ORDER**

Judge: Hon. Nathanael Cousins  
Court: Courtroom 5 – 4th Floor

Action Filed: April 27, 2021  
Trial Date: Not Set

1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve production of confidential,  
 3     proprietary, or private information for which special protection from public disclosure and from use for any  
 4     purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate  
 5     to and petition the Court to enter the following Stipulated Protective Order. The Parties acknowledge that  
 6     this Order does not confer blanket protections on all disclosures or responses to discovery and that the  
 7     protection it affords from public disclosure and use extends only to the limited information or items that are  
 8     entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as  
 9     set forth in Section 13.5, below, that this Stipulated Protective Order does not entitle them to file  
 10    confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed  
 11    and the standards that will be applied when a Party seeks permission from the Court to file material under  
 12    seal.

13    2.     DEFINITIONS

14            2.1    Challenging Party: a Party or Non-Party that challenges the designation of information or  
 15    items under this Order.

16            2.2    “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,  
 17    stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure  
 18    26(c).

19            2.3    Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their  
 20    support staff).

21            2.4    Designating Party: a Party or Non-Party that designates information or items that it produces  
 22    in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
 23    ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

24            2.5    Disclosure or Discovery Material: all items or information, regardless of the medium or  
 25    manner in which it is generated, stored, or maintained (including, among other things, testimony,  
 26    transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in  
 27    this action.

28            2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to the

litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action, and (2) is not currently, has not been in the past seven years, and is not anticipated to become an employee of a Party or of a Party's competitor. The parties agree to meet and confer if a good-faith exception to this provision is needed, and acknowledge that relevant factors include the length of time since work for a Party or Party's competitor occurred, and any relationship between the subject matter of that work and the scope of relevant discovery in this action.

2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.8 House Counsel: attorneys who are members in good standing of at least one state bar, who are employees of a Party, and who have responsibility for managing this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely sensitive "Confidential Information or Items" representing computer code and associated comments and revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a Party and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.12 Party: any party to this action.

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium, and professional jury or trial consultants) and their employees and

subcontractors, who have been retained by a Party or its Counsel to provide litigation support services with respect to this action.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as “HIGHLY CONFIDENTIAL – SOURCE CODE.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material in this action.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

### 4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; or (2) entry of a final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such

1 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to  
2 do so, the Designating Party should designate for protection only those parts of material, documents, items,  
3 or oral or written communications that qualify.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be  
5 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or  
6 retard the case development process or to impose unnecessary expenses and burdens on other Parties)  
7 expose the Designating Party to sanctions.

8 If it comes to a Designating Party's attention that information or items that it designated for  
9 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,  
10 that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken  
11 designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,  
13 second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery  
14 Material that qualifies for protection under this Order must be clearly so designated before the material is  
15 disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic documents, but  
18 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the  
19 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or  
20 "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected material. If only a  
21 portion or portions of the material on a page qualifies for protection, and it is feasible and not unduly  
22 burdensome to do so, such as in the context of Interrogatory responses, the Producing Party also must  
23 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must  
24 specify, for each portion, the level of protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for inspection need not  
26 designate them for protection until after the inspecting Party has indicated which material it would like  
27 copied and produced. During the inspection and before the designation, all of the material made available  
28 for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the

1 inspecting Party has identified the documents it wants copied and produced, the Producing Party must  
2 determine which documents qualify for protection under this Order. Then, before producing the specified  
3 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”)  
5 to each page that contains Protected Material.

6 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
7 Designating Party when practical identify on the record, before the close of the deposition, hearing, or other  
8 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
9 impractical to identify separately each portion of testimony that is entitled to protection and it appears that  
10 substantial portions of the testimony may qualify for protection, the Designating Party may invoke on the  
11 record (before the deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to  
12 identify the specific portions of the testimony as to which protection is sought and to specify the level of  
13 protection being asserted. Only those portions of the testimony that are appropriately designated for  
14 protection within the 21 days shall be covered by the provisions of this Stipulated Protective Order.  
15 Alternatively, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period  
16 is properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 Parties shall give the other Parties reasonable notice (a minimum of two business days) if they  
19 reasonably expect a deposition, hearing or other proceeding to include Protected Material so that the other  
20 Parties can ensure that only authorized individuals who have signed the “Acknowledgment and Agreement  
21 to Be Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a  
22 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.”

24 Transcripts containing Protected Material shall have an obvious legend on the title page that the  
25 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including  
26 line numbers as appropriate) that have been designated as Protected Material and the level of protection  
27 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these  
28 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall

1 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 2 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript  
 3 shall be treated only as actually designated.

4 (c) for information produced in some form other than documentary and for any other  
 5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
 6 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
 7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY or “HIGHLY CONFIDENTIAL – SOURCE CODE.”  
 8 If only a portion or portions of the information or item warrant protection, the Producing Party, to the  
 9 extent practicable, feasible, and not unduly burdensome, shall identify the protected portion(s) and specify  
 10 the level of protection being asserted.

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
 12 qualified information or items does not, standing alone, waive the Designating Party’s right to secure  
 13 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party  
 14 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this  
 15 Order.

## 16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party may challenge a designation of confidentiality at any time.  
 18 Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid  
 19 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of  
 20 the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to  
 21 mount a challenge promptly after the original designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
 23 providing written notice of each designation it is challenging and describing the basis for each challenge.  
 24 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the  
 25 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective  
 26 Order. The Parties shall attempt to resolve each challenge in good faith and must begin the process by  
 27 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14  
 28 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its

1 belief that the confidentiality designation was not proper and must give the Designating Party an  
 2 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
 3 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
 4 the next stage of the challenge process only if it has engaged in this meet and confer process first or  
 5 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely  
 6 manner.

7       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court intervention,  
 8 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in  
 9 compliance with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of challenge or  
 10 within 14 days of the Parties agreeing that the meet and confer process will not resolve their dispute,  
 11 whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the  
 12 movant has complied with the meet and confer requirements imposed in the preceding paragraph. If the  
 13 Designating Party fails to file and serve such a motion within the time allotted, the Challenging Party may  
 14 file and serve a motion to re-designate or de-designate under Civil Local Rule 7. A failure by the  
 15 Designating Party to make a timely motion may be considered as a factor in determining whether the  
 16 information subject to challenge should be protected. In addition, the Challenging Party may file a motion  
 17 challenging a confidentiality designation at any time if there is good cause for doing so, including a  
 18 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought  
 19 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has  
 20 complied with the meet and confer requirements imposed by the preceding paragraph.

21       The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
 22 Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary  
 23 expenses and burdens on other Parties) may expose the Challenging Party to sanctions. All Parties shall  
 24 continue to afford the material in question the level of protection to which it is entitled under the  
 25 Designating Party's designation until the Court rules on the challenge.

## 26       7. ACCESS TO AND USE OF PROTECTED MATERIAL

27       7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
 28 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,



1 or attempting to settle this litigation, and such Protected Material shall not be used for any business  
 2 purpose, in connection with any other legal proceeding, or directly or indirectly for any other purpose  
 3 whatsoever. Such Protected Material may be disclosed only to the categories of persons and under the  
 4 conditions described in this Order.<sup>1</sup> When the litigation has been terminated, a Receiving Party must  
 5 comply with the provisions of Section 14 below (FINAL DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure  
 7 manner that ensures that access is limited to the persons authorized under this Order. Protected Material  
 8 shall not be transmitted by a Receiving party, except for transmission to persons authorized under this  
 9 Order, without the written permission of the Producing Party or by further order of the Court.

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the  
 11 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
 12 item designated “CONFIDENTIAL” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
 14 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
 15 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
 16 as Exhibit A;

17 (b) House Counsel of the Receiving Party to whom disclosure is reasonably necessary for  
 18 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
 20 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be  
 21 Bound” (Exhibit A);

22 (c) the Court and its personnel;

23 (d) stenographic reporters, videographers and/or their staff, professional jury or trial  
 24 consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and  
 25 \_\_\_\_\_

26 <sup>1</sup> In the event a Non-Party witness is authorized to receive Protected Material that is to be used during his/her deposition but is  
 27 represented by an attorney not authorized under this Order to receive such Protected Material, the attorney must provide prior to  
 28 commencement of the deposition an executed “Acknowledgment and Agreement to Be Bound” in the form attached hereto as  
 Exhibit A. In the event such attorney declines to sign the “Acknowledgment and Agreement to Be Bound” prior to the  
 examination, the Parties, by their attorneys, shall jointly seek a protective order from the Court at the earliest practicable time  
 before the date of the examination, prohibiting the attorney from disclosing Protected Material.

1 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (e) during their depositions, witnesses in the action who are not employees of Google’s  
 3 current competitors at the time of the examination, to whom disclosure is reasonably necessary, and who  
 4 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by  
 5 the Designating Party or ordered by the Court. The parties agree that this paragraph shall not preclude a  
 6 Receiving Party from disclosing CONFIDENTIAL materials to witnesses who are employees of Apple Inc.  
 7 who have signed the “Acknowledgement and Agreement to Be Bound” and to whom it is reasonably  
 8 necessary to disclose the information for this litigation. Pages of transcribed deposition testimony or  
 9 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and  
 10 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

11 (f) the author or recipient of a document containing the information or a custodian or other  
 12 person who otherwise possessed or personally knows the information.

13 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
 14 Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving  
 15 Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 16 EYES ONLY” only to:

17 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
 18 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
 19 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
 20 as Exhibit A;

21 (b) House Counsel of the Receiving Party to whom disclosure is reasonably necessary for  
 22 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
 24 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as  
 25 to whom the procedures set forth in paragraph 7.5(a), below, have been followed;

26 (d) the Court and its personnel;

27 (e) stenographic reporters, videographers and their respective staff, professional jury or  
 28 trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation

1 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 (f) the author or recipient of a document containing the information or a custodian or other  
3 person who otherwise possessed or personally knows the information.

4 7.4 Disclosure of “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items.

5 Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party  
6 may disclose any information or item designated “HIGHLY CONFIDENTIAL – SOURCE CODE” only  
7 to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of  
9 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
10 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
11 as Exhibit A;

12 (b) up to three Experts of the Receiving Party (1) to whom disclosure is reasonably  
13 necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”  
14 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.5(a)(2), below and specifically  
15 identified as eligible to access “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items,  
16 have been followed, acknowledging that the Receiving Party may request in writing the ability to disclose  
17 “HIGHLY CONFIDENTIAL – SOURCE CODE” information or items to additional Experts, but that such  
18 disclosure may be made only upon prior written approval by the Designating Party, which shall not be  
19 unreasonably withheld and shall be given or denied with five business days of any request. If a request is  
20 denied the Parties shall meet and confer within five business days of such denial and, if agreement cannot  
21 be reached, shall file a joint letter pursuant to the Court’s Civil Standing Order within five business days of  
22 the meet and confer;

23 (c) the Court and its personnel;

24 (d) stenographic reporters, videographers and their respective staff who have signed the  
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A) and are transcribing or videotaping a  
26 deposition wherein “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items are being  
27 discussed, provided that such reporters and videographers shall not retain or be given copies of any  
28

portions of the source code, which if used during a deposition, will not be attached as an exhibit to the transcript but instead shall be identified only by its production numbers.

(e) while testifying at deposition or trial in this action only: any person who authored, previously received (other than in connection with this litigation), or was directly involved in creating, modifying, or editing the “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items, as evident from its face or reasonably certain in view of other testimony or evidence. Persons authorized to view “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items pursuant to this subparagraph shall not retain or be given copies of the “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items except while so testifying. Only printed copies of the Source Code will be provided to testifying witnesses during their testimony.

7.5 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” pursuant to paragraphs 7.3(c) or 7.4(b) first must make a written request to the Designating Party<sup>2</sup> that (1) identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding

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<sup>2</sup> For a Designating Party that is a Non-Party, experts previously disclosed and approved prior to the Non-Party’s production of any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” need not be disclosed to said Non-Party unless such Non-Party requests such information prior to the production of any Protected Material. Moreover, unless otherwise requested by the Non-Party, subsequently disclosed experts need not be disclosed to the Non-Party before that Non-Party’s Protected Material may be disclosed thereto.

1 five years,<sup>3</sup> and (6) identifies (by name and number of the case, filing date, and location of court) any  
 2 litigation in connection with which the Expert has offered expert testimony, including through a  
 3 declaration, report, or testimony at a deposition or trial, during the preceding five years.<sup>4</sup>

4 (b) A Party that makes a request and provides the information specified in the preceding  
 5 respective paragraphs may disclose the subject Protected Material to the identified Expert unless, within 14  
 6 days of delivering the request, the Party receives a written objection from the Designating Party. Any such  
 7 objection must set forth in detail the grounds on which it is based.

8 (c) A Party that receives a timely written objection must meet and confer with the  
 9 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within  
 10 seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to  
 11 the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule  
 12 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the  
 13 circumstances with specificity, set forth in detail the reasons why the disclosure to the Expert is reasonably  
 14 necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that  
 15 could be used to reduce that risk. In addition, any such motion must be accompanied by a competent  
 16 declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content  
 17 of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its  
 18 refusal to approve the disclosure.

19 (d) In any such proceeding, the Party opposing disclosure to the Expert shall bear the  
 20 burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
 21 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

22 (e) A party who has not previously objected to disclosure of Protected Material to an  
 23 Expert or whose objection has been resolved with respect to previously produced Protected Material shall  
 24 not be precluded from raising an objection to an Expert at a later time with respect to Protected Material

25 \_\_\_\_\_  
 26 <sup>3</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should  
 27 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party  
 seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

28 <sup>4</sup> It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the  
 termination of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY  
 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information.

that is produced after the time for objecting to such Expert has expired or if new information about that Expert is disclosed or discovered. Any such objection shall be handled in accordance with the provisions set forth above.

8. PROSECUTION AND ACQUISITION BAR<sup>5</sup>

(a) Absent written consent from the Designating Party, any individual affiliated with the Receiving Party who receives access to “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information designated by the Designating Party shall not be involved in the prosecution of patents or patent applications relating to the Exposure Notification System, including without limitation the patents asserted in this action and any patent or application claiming priority to or otherwise related to the patents asserted in this action, before any foreign or domestic agency, including the United States Patent and Trademark Office (“the Patent Office”). For purposes of this paragraph, “prosecution” includes any activity related to (i) the preparation or prosecution (for any person or entity) of patent applications, including among others reexamination and reissue applications or (ii) directly or indirectly participating, drafting, amending, advising, or otherwise affecting the scope or maintenance of patent claims.<sup>6</sup> To avoid any doubt, “prosecution” as used in this paragraph does not include representing a party challenging a patent before a domestic or foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination, *inter partes* reexamination, *inter partes* review, post grant review or covered business method review). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the affected individual and shall end two (2) years after final termination of this action.

(b) Absent written consent from the Designating Party, any individual affiliated with the Receiving Party who receives access to “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information designated by the Designating

<sup>5</sup> This Section also applies to Experts retained by the Receiving Party who receive access to “HIGHLY CONFIDENTIAL – SOURCE CODE” information.

<sup>6</sup> Prosecution includes, for example, original prosecution, reissue, *inter partes* review, post grant review, covered business model review and reexamination proceedings.

1 Party shall not be involved in activity related to: (i) the acquisition of patents or patent applications (for any  
 2 person or entity) relating to the Exposure Notification System; or (ii) advising or counseling clients  
 3 regarding the same. This Acquisition Bar shall begin when access to “CONFIDENTIAL,” “HIGHLY  
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”  
 5 information is first received by the affected individual and shall end two (2) years after final disposition of  
 6 this action as provided herein.

7 9. SOURCE CODE

8 (a) To the extent production of source code becomes necessary in this case, a Producing  
 9 Party may designate material as “HIGHLY CONFIDENTIAL - SOURCE CODE” if it comprises, includes,  
 10 or substantially discloses confidential, proprietary or trade secret source code or algorithms. The material  
 11 may include, among other things, technical design documentation that comprises, includes, or substantially  
 12 discloses source code or algorithms consistent with Paragraph 2.9, the disclosure of which to another Party  
 13 or Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive  
 14 means.

15 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”  
 16 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
 17 ONLY” information including the Prosecution Bar set forth in Paragraph 8 and the Acquisition Bar set  
 18 forth in Paragraph 8, and may be disclosed only as set forth in paragraphs 7.3 and 7.4.

19 (c) Any source code produced in discovery shall be made available only for inspection, not  
 20 produced except as set forth below, in a format allowing it to be reasonably reviewed and searched, during  
 21 normal business hours or at other mutually agreeable times, at (1) an office of the Producing Party or the  
 22 Producing Party’s Outside Counsel of Record or (2) another mutually agreed upon location. Unless  
 23 otherwise agreed by the Parties, any location under (1) or (2) shall be within the United States. The source  
 24 code shall be made available for inspection on a secured computer (the “Source Code Computer”) in a  
 25 secured, access-controlled room without Internet access or network access to other computers, and the  
 26 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any  
 27 recordable media or recordable device. The secured computer shall have disk encryption and be password  
 28 protected. Use or possession of any input/output device (e.g., USB memory stick, mobile phone or tablet,



1 camera or any camera-enabled device, CD, floppy disk, portable hard drive, laptop, or any device that can  
2 access the Internet or any network or external system, etc.) is prohibited while accessing the computer  
3 containing the source code. All persons entering the access-controlled room containing the source code  
4 must agree to submit to reasonable security measures to ensure they are not carrying any prohibited items  
5 before they will be given access to the access-controlled room. The computer containing source code will  
6 be made available for inspection during regular business hours, upon reasonable notice to the producing  
7 party, which shall not be less than 3 business days in advance of the requested inspection. The Producing  
8 Party may visually monitor the activities of the Receiving Party's representatives during any source code  
9 review, but only to ensure that there is no unauthorized recording, copying, or transmission of the source  
10 code.

11 (d) No person shall copy, e-mail, transmit, upload, download, print, photograph or  
12 otherwise duplicate any portion of the designated "HIGHLY CONFIDENTIAL - SOURCE CODE"  
13 material, except that the Receiving Party may request paper copies of limited portions of source code, but  
14 only if and to the extent reasonably necessary for the preparation of court filings, pleadings, expert reports,  
15 or other papers, or for deposition or trial. In no event may the Receiving Party print more than 25  
16 consecutive pages, or an aggregate total of more than 500 pages, of source code during the duration of the  
17 case without prior written approval by the Producing Party, which shall not be unreasonably withheld. The  
18 source code may only be transported by the Receiving Party via hand carry, Federal Express or other  
19 similarly reliable courier. The Receiving Party shall not request paper copies for the purposes of reviewing  
20 the source code other than electronically as set forth in paragraph (c) in the first instance. The Producing  
21 Party shall provide the requested material in paper form including Bates numbers and the label "HIGHLY  
22 CONFIDENTIAL - SOURCE CODE" unless the production of such materials is challenged as discussed in  
23 this paragraph. The Producing Party may challenge the amount of source code requested in hard copy form  
24 pursuant to the dispute resolution procedure and timeframes set forth in paragraph 6 whereby the Producing  
25 Party is the "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute  
26 resolution. Contested printouts do not need to be produced to the Receiving Party until the matter is  
27 resolved by the Court, provided, however, that the Receiving Party may seek a Court order for production  
28



1 in advance of such resolution if it determines in good faith that such an order is necessary to avoid undue  
2 delay. In the event advance production is ordered and the dispute is subsequently resolved in favor of the  
3 Challenging Party, the contested printouts shall be returned within 2 (two) business days to the Challenging  
4 Party.

5 (e) The Receiving Party shall maintain a record of any individual who has inspected any  
6 portion of the source code in electronic or paper form. The Receiving Party shall maintain all printed  
7 portions of the source code in a secured, locked area under direct control of counsel responsible for  
8 maintaining the security and confidentiality of the designated materials. Any paper copies designated  
9 “HIGHLY CONFIDENTIAL - SOURCE CODE” shall be stored or viewed only at (i) the offices of  
10 outside counsel for the Receiving Party, (ii) the offices of outside experts or consultants who have been  
11 approved to access source code; (iii) the site where any deposition is taken (iv) the Court; or (v) any  
12 intermediate location necessary to transport the information to a hearing, trial or deposition. Except as  
13 provided in subsection (i) of this section, the Receiving Party shall not create any electronic or other  
14 images of the paper copies and shall not convert any of the information contained in the paper copies into  
15 any electronic format. Any printed pages of source code, and any other documents or things reflecting  
16 source code that have been designated by the producing party as “HIGHLY CONFIDENTIAL - SOURCE  
17 CODE” may not be copied, digitally imaged or otherwise duplicated, except in limited excerpts necessary  
18 to attach as exhibits to depositions, expert reports, or court filings as discussed below. Any paper copies  
19 used during a deposition shall be retrieved by the Receiving Party at the end of each day and must not be  
20 given to or left with a court reporter or any other unauthorized individual.

22 (f) The Receiving Party’s outside counsel and/or expert shall be entitled to take notes  
23 relating to the source code but may not copy any portion of the source code into the  
24 notes. Notwithstanding the foregoing, such notes may include file names, line numbers, and textual  
25 descriptions of functions or operations. No copies of all or any portion of the source code may leave the  
26 room in which the source code is inspected except as otherwise provided herein. Further, no other written  
27 or electronic record of the source code is permitted except as otherwise provided herein.  
28

1 (g) A list of names of persons who will view the source code will be provided to the  
2 Producing Party in conjunction with any written (including email) notice requesting inspection. Unless  
3 otherwise agreed by the Parties, the Receiving Party shall maintain a daily log of the names of persons who  
4 enter the access-controlled room to view the source code and when they enter and depart. The Producing  
5 Party shall be entitled to a copy of the log upon request.

6 (h) The Receiving Party's outside counsel shall maintain a log of all copies of the  
7 source code (received from a Producing Party) that are delivered by the Receiving Party to any  
8 person. The log shall include the names of the recipients and reviewers of copies and locations where the  
9 copies are stored. Upon request by the Producing Party, the Receiving Party shall provide reasonable  
10 assurances and/or descriptions of the security measures employed by the Receiving Party and/or person  
11 that receives a copy of any portion of the source code.

12 (i) Except as provided in this paragraph, the Receiving Party may not create electronic  
13 images, or any other images, of the source code from the paper copy for use on a computer (e.g., may not  
14 scan the source code to a PDF, or photograph the code). The Receiving Party may create an electronic  
15 copy or image of limited excerpts of source code only to the extent necessary in a pleading, exhibit, expert  
16 report, discovery document, deposition transcript, other Court document, or any drafts of these documents<sup>7</sup>  
17 ("SOURCE CODE DOCUMENTS"). The Receiving Party shall only include such excerpts as are  
18 reasonably necessary for the purposes for which such part of the Source Code is used. Images or copies of  
19 Source Code shall not be included in correspondence between the parties (references to production  
20 numbers shall be used instead) and shall be omitted from pleadings and other papers except to the extent  
21 permitted herein. The Receiving Party may create an electronic image of a selected portion of the Source  
22 Code only when the electronic file containing such image has been encrypted using commercially  
23 reasonable encryption software including password protection. The communication and/or disclosure of  
24 electronic files containing any portion of source code shall at all times be limited to individuals who are  
25  
26  
27  
28

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<sup>7</sup> Draft shall only include those excerpts the Receiving Party believes will be included in the final version.

1 authorized to see source code under the provisions of this Protective Order. Additionally, all electronic  
2 copies must be labeled "HIGHLY CONFIDENTIAL - SOURCE CODE."

3 (j) To the extent portions of source code are quoted in a SOURCE CODE DOCUMENT,  
4 either (1) the entire document will be stamped and treated as HIGHLY CONFIDENTIAL- SOURCE  
5 CODE or (2) those pages containing quoted Source Code will be separately bound, and stamped and  
6 treated as HIGHLY CONFIDENTIAL - SOURCE CODE.

7 (k) The Receiving Party shall maintain a log of all electronic images and paper copies of  
8 Source Code Material in its possession or in the possession of its retained consultants, including the names  
9 of the recipients and reviewers of any electronic or paper copies and the locations where the copies are  
10 stored.

11 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
12 LITIGATION

13 If a Party is served with a subpoena issued by a court, arbitral, administrative, or legislative body,  
14 or with a court order issued in other litigation that compels disclosure of any information or items  
15 designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
16 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification shall include a copy  
18 of the subpoena or court order;

19 (b) promptly notify in writing the person who caused the subpoena or order to issue in the  
20 other litigation that some or all of the material covered by the subpoena or order is subject to this Protective  
21 Order. Such notification shall include a copy of this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
23 Designating Party whose Protected Material may be affected.<sup>8</sup>  
24

25  
26  
27  
28 <sup>8</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

If the Designating Party timely<sup>9</sup> seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days

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<sup>9</sup> Unless it advises the Receiving Party in writing that up to an additional 14 days is required, which request shall not be unreasonably denied, the Designating Party shall have up to 14 days from the service of the notification pursuant to Section 10(a) to seek a protective order.

of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely objects or seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court.<sup>10</sup> Absent a Court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material. In the event the Non-Party objects but fails to timely seek protection in this court, the Receiving Party shall not oppose any motion to compel production brought by the Party that made the discovery request.

#### 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

If a Receiving Party or person authorized to access Protected Material ("Authorized Recipient") discovers any loss of Protected Material or a breach of security, including any actual or reasonably suspected unauthorized access to another party's Protected Material, the Receiving Party or Authorized Recipient shall: (1) promptly take all necessary and appropriate corrective action to terminate any unauthorized access; (2) promptly (within 72 hours) provide written notice to the Designating Party of such breach, including available information regarding the size and scope of the breach; and (3) investigate and make reasonable efforts to remediate the effects of the breach.

#### 13. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

Pursuant to Federal Rule of Evidence 502(d) and (e), the production of a privileged or work-product-protected document is not a waiver of privilege or protection from discovery in this case or in any

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<sup>10</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 other federal or state proceeding. For example, the mere production of privileged or work-product-  
2 protected documents in this case as part of a mass production is not itself a waiver in this case or any other  
3 federal or state proceeding. A producing party may assert privilege or protection over produced documents  
4 at any time by notifying the receiving party in writing of the assertion of privilege or protection and the  
5 basis for it. After being notified, a party must promptly return or destroy the specified information and any  
6 copies it has and may not sequester, use or disclose the information until the claim is resolved, except as  
7 reasonably necessary for a determination of the claim by the Court. In addition, the Receiving Party shall  
8 immediately notify the Producing Party of information that contains privileged matter or attorney work  
9 product if such information appears on its face to have been inadvertently produced. This paragraph is not  
10 intended to modify whatever procedure may be established in an e-discovery order that provides for  
11 production without prior privilege review.

12 14. MISCELLANEOUS

13 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
14 modification by agreement with the Parties or by applying to the Court if such agreement by all Parties  
15 cannot be reached. Furthermore, without application to the Court, any Producing Party or Designating  
16 Party that is a beneficiary of the protections of this Order may enter a written agreement with all Parties  
17 releasing any Party from one or more requirements of this Order even if the conduct subject to the release  
18 would otherwise violate the terms herein.

19 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
20 Party waives any right it otherwise would have to object to disclosing or producing any information or item  
21 on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to  
22 object on any ground to use in evidence of any of the material covered by this Protective Order.

23 14.3 No Agreement Concerning Discoverability. The identification or agreed upon treatment of  
24 certain types of Disclosure and Discovery Material does not reflect agreement by the Parties that the  
25 disclosure of such categories of Disclosure and Discovery Material is required or appropriate in this action.  
26 The Parties reserve the right to argue that any particular category of Disclosure and Discovery Material  
27 should not be produced.

28 14.4 Export Control. Disclosure of Protected Material shall be subject to all applicable laws and

1 regulations relating to the export of technical data contained in such Protected Material, including the  
2 release of such technical data to foreign persons or nationals in the United States or elsewhere. Each party  
3 receiving Protected Information shall comply with all applicable export control statutes and regulations.  
4 *See, e.g.*, 15 CFR 734.2. The Producing Party shall be responsible for identifying any such controlled  
5 technical data, and the Receiving Party shall take measures necessary to ensure compliance with this  
6 Section.

7 14.5 Filing Protected Material. Without written permission from the Designating Party or a Court  
8 order secured after appropriate notice to all interested persons, a Party may not file in the public record in  
9 this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
10 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a Court order  
11 authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a  
12 sealing order will issue only upon a request establishing that the Protected Material at issue is privileged,  
13 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request  
14 to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the  
15 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-  
16 5(e)(2) unless otherwise instructed by the court.

17 14.6 Use of Protected Material at Hearing or Trial. A Party shall, if practical, provide a minimum  
18 of two business days' notice to the Producing Party in the event that a Party intends to use any Protected  
19 Information during trial. Subject to any challenges under Section 6, the Parties will not oppose any  
20 reasonable request by the Producing Party that the courtroom be sealed, if allowed by the Court, during the  
21 presentation of any testimony, evidence, or argument relating to or involving the use of any Protected  
22 Material.

23 14.7 No Limitation on Legal Representation. Nothing in this Order shall preclude or impede  
24 Outside Counsel of Record's ability to communicate with or advise their client in connection with this  
25 litigation based on such counsel's review and evaluation of Protected Material, provided however that such  
26 communications or advice shall not disclose or reveal the substance or content of any Protected Material  
27 other than as permitted under this Order.

28 14.8 Agreement Upon Execution. Each of the Parties agrees to be bound by the terms of this

1 Stipulated Protective Order as of the date counsel for such party executes this Stipulated Protective Order,  
2 even if prior to entry of this Order by the Court.

3 14.9 Data Security. Any person in possession of Protected Material will maintain appropriate  
4 administrative, technical, and organizational safeguards (“Safeguards”) that protect the security and privacy  
5 of Protected Material. The Safeguards will meet or exceed relevant industry standards and limit the  
6 collection, storage, disclosure, use of, or access to Protected Material solely to personnel and purposes  
7 authorized by this Order. As part of these Safeguards, each person will use a secure transfer method for all  
8 transfers or communication of Protected Material, and take reasonable measures to password protect and  
9 encrypt Protected Material, when transferring or communicating such material outside of each respective  
10 Counsel’s firm. If Protected Material is to be used during a deposition, the parties will meet and confer  
11 prior to the deposition regarding the technology to be used to conduct the deposition with respect to that  
12 Protected Material (e.g., for audio/video-conferencing and exhibits).

13 15. FINAL DISPOSITION

14 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving  
15 Party must return all Protected Material to the Producing Party or destroy such material. As used in this  
16 subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other  
17 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned  
18 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the  
19 same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category,  
20 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
21 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format  
22 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
23 entitled to retain an archival copy of all pleadings, motions and trial briefs (including all supporting and  
24 opposing papers and exhibits thereto), written discovery requests and responses (and exhibits thereto),  
25 deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or introduced into  
26 evidence at any hearing or trial, and their attorney work product which refers or is related to any  
27 “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information for  
28 archival purposes only. Any such archival copies that contain or constitute Protected Material remain



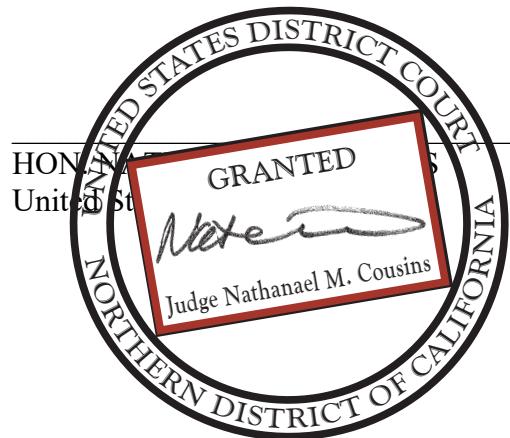
1 subject to this Protective Order as set forth in Section 4 (DURATION).

2 16. INTERPRETATION, ENFORCEMENT, AND CONTINUING JURISDICTION

3 The United States District Court for the Northern District of California is responsible for the  
 4 interpretation and enforcement of this Order. After final disposition of this litigation, the provisions of this  
 5 Order shall continue to be binding except with respect to that Disclosure or Discovery Material that  
 6 become a matter of public record. This Court retains and shall have continuing jurisdiction over the Parties  
 7 and recipients of the Protected Material for enforcement of the provision of this Order following final  
 8 disposition of this litigation. All disputes concerning Protected Material produced under the protection of  
 9 this Order shall be resolved by the United States District Court for the Northern District of California.

10  
 11 **IT IS SO ORDERED.**

12  
 13 Dated: October 12, 2021



**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand  
 the Stipulated Protective Order that was issued by the United States District Court for the Northern District  
 of California on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the number and  
 initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this  
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to  
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
 manner any information or item that is subject to this Stipulated Protective Order to any person or entity  
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order,  
 even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
 \_\_\_\_\_ [print or type full address and telephone number] as my  
 California agent for service of process in connection with this action or any proceedings related to  
 enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
 [printed name]

Signature: \_\_\_\_\_  
 [signature]